

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1350

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Section ~~370~~ 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1350, as amended, Roger Hernández. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. ~~However, other provisions of the act suspend the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers, after a period of time to be determined by the PUC, until the Department of Water Resources no longer supplies electricity under that law. The act requires the PUC to require a consumer, as a prerequisite for the consumer to engage in direct transactions, to have the obligation to pay specified uneconomic costs of an electrical corporation subject to specified conditions. The act provides that to the extent the consumer does not use the electrical corporation's facilities for direct transactions, the obligation to pay is required to be confirmed in writing. A violation of the act is a crime. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition~~

costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.

This bill would require, until January 1, 2016, the electricity marketer engaged in the direct transaction with the consumer to inform the consumer that the consumer's obligation to pay those costs is to be confirmed in writing. Because a violation of this requirement is a crime, this bill would impose a state-mandated local program: the commission to adopt and implement a schedule that implements a second phase-in period for expanding direct transactions, as specified, over a reasonable time commencing not later than July 1, 2014. The bill would require the commission to ensure that nonprofit and government customers, as defined, are given priority to acquire electric service through direct transactions and to ensure that not less than 25% of the allowable kilowatthours in any phase-in period are reserved for nonprofit and governmental customers. The bill would establish as a condition precedent to the second phase-in of the expansion of direct transactions that the commission find that other providers supplying electricity through a direct transaction are procuring eligible renewable energy resources sufficient to meet their procurement requirements pursuant to the California Renewables Portfolio Standard Program.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 365.1 of the Public Utilities Code is
2 amended to read:

3 365.1. (a) Except as expressly authorized by this section, and
4 subject to the limitations in subdivisions (b) and (c), the right of
5 retail end-use customers pursuant to this chapter to acquire service
6 from other providers is suspended until the Legislature, by statute,
7 lifts the suspension or otherwise authorizes direct transactions. For
8 purposes of this section, "other provider" means any person,
9 corporation, or other entity that is authorized to provide electric
10 service within the service territory of an electrical corporation
11 pursuant to this chapter, and includes an aggregator, broker, or
12 marketer, as defined in Section 331, and an electric service
13 provider, as defined in Section 218.3. "Other provider" does not
14 include a community choice aggregator, as defined in Section
15 331.1, and the limitations in this section do not apply to the sale
16 of electricity by "other providers" to a community choice
17 aggregator for resale to community choice aggregation electricity
18 consumers pursuant to Section 366.2.

19 (b) (1) The commission shall allow individual retail
20 nonresidential end-use customers to acquire electric service from
21 other providers in each electrical corporation's distribution service
22 territory, up to a maximum allowable total kilowatthours annual
23 limit. ~~The~~

24 (2) *During the first phase-in period for expanding access to*
25 *direct transactions, the* maximum allowable annual limit shall be
26 established by the commission for each electrical corporation at
27 the maximum total kilowatthours supplied by all other providers
28 to distribution customers of that electrical corporation during any
29 sequential 12-month period between April 1, 1998, and ~~the~~
30 ~~effective date of this section. Within six months of the effective~~

1 ~~date of this section, or by July 1, 2010, whichever is sooner, the~~
2 ~~October 11, 2009. The commission shall adopt and implement a~~
3 ~~the first direct transactions reopening schedule that commences~~
4 ~~immediately commencing April 11, 2010, and will phase in the~~
5 allowable amount of increased kilowatthours over a period of not
6 less than three years, and not more than five years, raising the
7 allowable limit of kilowatthours supplied by other providers in
8 each electrical corporation's distribution service territory from the
9 number of kilowatthours provided by other providers as of ~~the~~
10 ~~effective date of this section~~ *October 11, 2009*, to the maximum
11 allowable annual limit for that electrical corporation's distribution
12 service territory. The commission shall review and, if appropriate,
13 modify its currently effective rules governing direct transactions,
14 but that review shall not delay the start of the *first* phase-in
15 schedule.

16 *(3) The commission shall adopt and implement a schedule that*
17 *implements a second phase-in period for expanding access to*
18 *direct transactions over a reasonable time, commencing not later*
19 *than July 1, 2014. During the second phase-in period, the*
20 *allowable amount of kilowatthours supplied by other providers in*
21 *each electrical corporation's distribution service territory, in*
22 *addition to the amounts authorized pursuant to paragraph (2),*
23 *shall be increased by the following amounts: for Pacific Gas and*
24 *Electric Company, 3,946 gigawatthours; for Southern California*
25 *Edison Company, 3,946 gigawatthours; and for San Diego Gas*
26 *and Electric Company, 462 gigawatt hours. The commission shall*
27 *ensure that nonprofit and government customers are given priority*
28 *to acquire electric service through direct transactions and shall*
29 *ensure that not less than 25 percent of the allowable kilowatthours*
30 *in any phase-in period are reserved for nonprofit and governmental*
31 *customers. Should nonprofit and governmental customers not*
32 *acquire service through direct transactions up to 25 percent, the*
33 *commission shall make direct transactions available to other*
34 *customers up to the limits established by the commission for each*
35 *period. As a condition precedent to the authorization of additional*
36 *direct transactions pursuant to this paragraph, the commission*
37 *shall find that other providers are procuring eligible renewable*
38 *energy resources sufficient to meet their procurement requirements*
39 *pursuant to the renewables portfolio standard established pursuant*
40 *to Article 16 (commencing with Section 399.11). The commission*

1 *may review and, if appropriate, modify its then effective rules*
2 *governing direct transactions, but that review shall not delay the*
3 *start of the second phase-in schedule. For purposes of this*
4 *paragraph, the following terms have the following meanings:*

5 (A) *“Governmental customers” means a city, county, whether*
6 *general law or chartered, a city and county, special district, school*
7 *district, political subdivision, or other local public agency, but*
8 *shall not mean a joint powers authority, the state or any agency*
9 *or department of the state other than an individual campus of the*
10 *University of California, the California State University, or a*
11 *community college.*

12 (B) *“Nonprofit customer” means any customer that is a*
13 *nonprofit organization described in Section 501(c)(3) of the*
14 *Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), that is exempt*
15 *from taxation under Section 501(a) of the Internal Revenue Code*
16 *(26 U.S.C. Sec. 501(a)).*

17 (c) Once the commission has authorized additional direct
18 transactions pursuant to subdivision (b), it shall do both of the
19 following:

20 (1) Ensure that other providers are subject to the same
21 requirements that are applicable to the state’s three largest electrical
22 corporations under any programs or rules adopted by the
23 commission to implement the resource adequacy provisions of
24 Section 380, the renewables portfolio standard provisions of Article
25 16 (commencing with Section 399.11), and the requirements for
26 the electricity sector adopted by the State Air Resources Board
27 pursuant to the California Global Warming Solutions Act of 2006
28 (Division 25.5 (commencing with Section 38500) of the Health
29 and Safety Code). This requirement applies notwithstanding any
30 prior decision of the commission to the contrary.

31 (2) (A) Ensure that, in the event that the commission authorizes,
32 in the situation of a contract with a third party, or orders, in the
33 situation of utility-owned generation, an electrical corporation to
34 obtain generation resources that the commission determines are
35 needed to meet system or local area reliability needs for the benefit
36 of all customers in the electrical corporation’s distribution service
37 territory, the net capacity costs of those generation resources are
38 allocated on a fully nonbypassable basis consistent with departing
39 load provisions as determined by the commission, to all of the
40 following:

1 (i) Bundled service customers of the electrical corporation.
2 (ii) Customers that purchase electricity through a direct
3 transaction with other providers.

4 (iii) Customers of community choice aggregators.

5 (B) If the commission authorizes or orders an electrical
6 corporation to obtain generation resources pursuant to subparagraph
7 (A), the commission shall ensure that those resources meet a system
8 or local reliability need in a manner that benefits all customers of
9 the electrical corporation. The commission shall allocate the costs
10 of those generation resources to ratepayers in a manner that is fair
11 and equitable to all customers, whether they receive electric service
12 from the electrical corporation, a community choice aggregator,
13 or an electric service provider.

14 (C) The resource adequacy benefits of generation resources
15 acquired by an electrical corporation pursuant to subparagraph (A)
16 shall be allocated to all customers who pay their net capacity costs.
17 Net capacity costs shall be determined by subtracting the energy
18 and ancillary services value of the resource from the total costs
19 paid by the electrical corporation pursuant to a contract with a
20 third party or the annual revenue requirement for the resource if
21 the electrical corporation directly owns the resource. An energy
22 auction shall not be required as a condition for applying this
23 allocation, but may be allowed as a means to establish the energy
24 and ancillary services value of the resource for purposes of
25 determining the net costs of capacity to be recovered from
26 customers pursuant to this paragraph, and the allocation of the net
27 capacity costs of contracts with third parties shall be allowed for
28 the terms of those contracts.

29 (D) It is the intent of the Legislature, in enacting this paragraph,
30 to provide additional guidance to the commission with respect to
31 the implementation of subdivision (g) of Section 380, as well as
32 to ensure that the customers to whom the net costs and benefits of
33 capacity are allocated are not required to pay for the cost of
34 electricity they do not consume.

35 (d) (1) If the commission approves a centralized resource
36 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
37 380, upon the implementation of the centralized resource adequacy
38 mechanism the requirements of paragraph (2) of subdivision (c)
39 shall be suspended. If the commission later orders that electrical
40 corporations cease procuring capacity through a centralized

1 resource adequacy mechanism, the requirements of paragraph (2)
2 of subdivision (c) shall again apply.

3 (2) If the use of a centralized resource adequacy mechanism is
4 authorized by the commission and has been implemented as set
5 forth in paragraph (1), the net capacity costs of generation resources
6 that the commission determines are required to meet urgent system
7 or urgent local grid reliability needs, and that the commission
8 authorizes to be procured outside of the Section 380 or Section
9 454.5 processes, shall be recovered according to the provisions of
10 paragraph (2) of subdivision (c).

11 (3) Nothing in this subdivision supplants the resource adequacy
12 requirements of Section 380 or the resource procurement
13 procedures established in Section 454.5.

14 (e) The commission may report to the Legislature on the efficacy
15 of authorizing individual retail end-use residential customers to
16 enter into direct transactions, including appropriate consumer
17 protections.

18 ~~SECTION 1. Section 370 of the Public Utilities Code is~~
19 ~~amended to read:~~

20 ~~370. The commission shall require, as a prerequisite for a~~
21 ~~consumer in California to engage in direct transactions permitted~~
22 ~~in Section 365, that beginning with the commencement of these~~
23 ~~direct transactions, the consumer shall have an obligation to pay~~
24 ~~the costs provided in Sections 367, 368, 375, and 376, and subject~~
25 ~~to the conditions in Sections 371 to 374, inclusive, directly to the~~
26 ~~electrical corporation providing electricity service in the area in~~
27 ~~which the consumer is located. This obligation shall be set forth~~
28 ~~in the applicable rate schedule, contract, or tariff option under~~
29 ~~which the customer is receiving service from the electrical~~
30 ~~corporation. To the extent the consumer does not use the electrical~~
31 ~~corporation's facilities for direct transaction, the obligation to pay~~
32 ~~shall be confirmed in writing, and the customer shall be advised~~
33 ~~by any electricity marketer engaged in the transaction of the~~
34 ~~requirement that the customer execute a confirmation. The~~
35 ~~requirement for marketers to inform customers of the written~~
36 ~~requirement shall cease on January 1, 2016.~~

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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